IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.91 of 2004 (O&M)

Decided on : October 14, 2010

Bhagel Singh

... Petitioner

VERSUS

State of Haryana

... Respondent

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.J.S.Toor,
Advocate for the petitioner.

Mr.J.S.Rattu,
Deputy Advocate General, Haryana.

A.N.JINDAL, J.-

Challenge is to the judgment dated 19.12.2003 passed by the Appellate Court dismissing the appeal, preferred by the accused – petitioner (herein referred as `the accused') against the judgment dated 27.11.1999 passed by the Trial Court convicting and sentencing him to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/- under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for brevity `the Act').

The prosecution case in brief, is that on 25.2.1992, Yashpal

Kalra, Government Food Inspector intercepted the accused, who was found carrying 30 kg of cow milk. After disclosing his identity and after associating Dharampal Singh an eye-witness, the Food Inspector served notice (Ex.PA) upon the accused. After stirring the milk, he purchased 750 ml out of it on payment of Rs.4.50 paise. Then he divided the purchased milk in three equal parts; poured the same in three dry and clean bottles; added necessary preservative; duly labeled, stoppered and sealed the same, and sent one sample bottle to the Public Analyst, Haryana, Chandigarh for analysis. The remaining bottles were deposited with the Local Health Authority. He completed the other legal formalities. The Public Analyst vide his report (Ex.PD) found milk fat to the extent of 4.6% and milk solids not fat 7.6%, and as such, he opined that milk solids not fat deficient by 1.1% of the minimum prescribed standard.

On service of notice under Section 13(2) of the Act, on the request of the accused, the second part of the sample was sent to the Director, Central Food Laboratory for analysis, who vide his report Ex.PF again found the sample to be adulterated, inasmuch as deficiency of milk solids not fat to the extent of 1%.

After recording the preliminary evidence, the accused was summoned. He was charged for the aforesaid offence, to which he pleaded not guilty and opted to contest.

In the after charge evidence, the prosecution examined Yashpal Kalra (PW1), Dr.B.B.Lala (PW2) and Balwant Singh (PW3).

The accused in his statement under Section 313 of the Code of Criminal Procedure, 1973 denied all the incriminating circumstances appearing against him and further pleaded that he was not carrying the milk

for public sale, but was taking it for `Akhand-path' in the Gurudwara. In defence, he examined Kuljit Singh (DW1). The trial ended in conviction. His appeal also failed.

Heard.

The counsel has urged that since there are divergent reports made by Public Analyst, Haryana (Ex.PD) as well as by Central Food Laboratory (Ex.PF), therefore, due to the variations therein, the same cannot be believed. No doubt, the report made by Public Analyst, Haryana (Ex.PD indicates milk solids not fat to the extent of 7.6% and milk fat to the extent of 4.6%, whereas, the report made by the Central Food Laboratory points out that milk fat was found to be 4.5% and milk solids not fat was found to be 7.53%, but it is settled by now that the report made by Central Food Laboratory supersedes the report made by Public Analyst and on receipt of the report of the Central Food Laboratory, the report made by Public Analyst loses its existence. The Kerala High Court in case **Food Inspector, Corporation of Cochin, Cochin-II vs. Hameed**, *1983 Kr LT 901 : (1983 Cri LJ NOC 224 KER),* after considering practically the entire case law on the point, including the decisions in **Abdul Hameed vs. Food Inspector**, *1969 Ker LR 922,* **State of Kerala vs. Vasudevan Nair**, *1974 Kr LT617,* **State of Kerala vs. P.K.Chamu**, *1975 Ker LT 411* and **State of Kerala vs. K.C.John**, *1978 Ker LT 738*, observed in para 23 as under:-

> "it is settled law that report of the Public Analyst superseded by the certificate of the Director which has conclusive effect also. Analysis in the two cases is done by different persons at different laboratories. It would not be surprising if, assuming

> the best conditions, there is some difference in the results of the two analysis. Even in cases where sampling and analysis is done to the satisfaction of the most exacting standards, there could be variation in the percentage of different components arrived at in the two laboratories. But once the report of the Public Analyst is superseded by the report of the Director Central Food Laboratory, there is no report of the Public Analyst available in the eyes of law for comparison with the certificate issued by the Director. The court cannot, therefore, legitimately make such a comparison and conclude that there are divergences and therefrom draw an inference that the sampling must have been done improperly. To arrive at such a conclusion would amount to flying in the face of settled position of law and the terms of sub sections (3) and (5) of Section 13 of the Act."

The aforesaid observation were later on considered by A Full Bench of Kerala High Court in case **Mathukutty vs. State of Kerala and another**, *AIR 1988 Kerala 60,* whereupon, they observed as under:-

> "We hold that the above is the correct position of law. The divergences in the report and the certificate cannot be used to contend that the number of insects or the percentage of insect damaged seeds have increased during the interval between the analysis by the Public Analyst and the Director. Hence, we cannot draw an inference that on the date of sampling, number

of insects or percentage of insect damaged seeds would have been much less than what is shown in the report or the certificate."

Thus, in the light of the aforesaid decision, no importance could be attached to the report of the Public Analyst when the report of the Central Food Laboratory has been requisitioned and proved on the record.

Now, coming to the other argument that the complaint does not contain the precise allegations and none of the witnesses have also stated about the yardsticks applied by the Food Inspector for stirring the milk for taking out the samples. In this regard, both the prosecution witnesses, namely; Yashpal Kalra (PW1) and Dr.B.B.Lala (PW2) have consistently stated that the accused was found in possession of 30 kg of cow milk and the sample was taken out by Yashpal Kalra, Government Food Inspector (PW1) after properly mixing and stirring the whole milk. Similarly, the complaint also clearly indicates that the milk was stirred and made homogeneous before making purchase of sample milk out of the bulk milk.

There is nothing in the Act, which may be indicative of the measures to be taken at the time of drawing the sample. The rules only prescribe for stirring and making the milk homogeneous. Similar view was taken by the Supreme Court in case **Food Inspector, Municipal Corporation, Baroda vs. Madan Lal Ram Sharma**, *1982(2) FAC 372*, wherein, it was observed that there is nothing in the Act or Rules, which prescribed that churning of food like milk and curd must be done with some instrument. Further, this High Court in case **Gobind Ram vs.**

State of Haryana and another, *2001(2) FAC 218* observed that it was the duty of the vendor to have stirred the milk and make it homogeneous before giving the sample to the Food Inspector. In any case, no undue importance could be given to the stirring and making the milk homogeneous before taking the sample, to be sent for analysis. Similar observations were made in **State of Punjab vs. Ramesh Kumar**, *1992(1) PFA Cases (P&H) 120*, wherein, it was observed that no undue importance can be given to the non-mention of the fact of stirring in the complaint even while evaluating the evidence of the prosecution on that point.

As regards the argument that the Food Inspector did not mention in the complaint with regard to stirring of the milk with his own hand and the printed words do indicate that he did not apply his mind, it is observed that it has been usually seen that Food Inspectors, who are deputed to take the samples, get the forms printed and they are well-aware of the contents mentioned therein. Therefore, they complete the form being alive of the contents mentioned therein and, as such, the Food Inspector did not write in his own hand about the stirring of the milk and making it homogeneous. However, they carefully fill in the blanks, mention the names of the parties, the time and place of sampling, the names of the witnesses, nature of the article and such other things whichever happen, therefore, it does not necessarily make the court to draw an inference that the Food Inspector did not apply his mind.

As regards the next argument that the deficiency is marginal one and, therefore, the same could be, because of other reasons, but it cannot be said to be adulterated, it may be observed that the Legislature

after long years of experience was well within its wisdom to make the parameters in order to assess the purity of the food articles and if the article is found to be less than the required standard, then even a negligible or a marginal deviation from the prescribed standard would render the same adulterated. It was observed in **Municipal Committee, Amritsar vs. Hazara Singh**, *1948-1997 SCPFA cases 131* that no law can be laid down holding that minimal deficiencies in the milk components justified acquittal in all food adulteration cases.

It was observed by the Full Bench of this High Court in **State of Punjab vs. Teja Singh**, *1977 FAJ 237* that it is not permissible to add the percentage of various constituents of milk disclosed by the Public Analyst and to deduce a conclusion therefrom about the over-all deficiency or otherwise of the milk. The Court is not entitled to assume a slight or reasonable margin of error in the conclusion recorded by the Public Analyst. Negligible or marginal deviation from the prescribed standard cannot be ignored. Thus, the argument that since the percentage of the milk fat was in excess of the prescribed standard, would be said to be persuasive to take the case out of the term of `adulterated food article'. It may be mentioned that according to the definition of “adulterated” as given in Section 2 of the Act, if the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, the same is “adulterated”. Hence, while deriving the ratio from the observations made by the Full Bench judgment, as referred to above, the milk in question being not in conformity with the prescribed standard can

certainly be said to be adulterated.

No other point has been raised.

The menace of adulteration is on the increase these days. The business men of the day in an endeavour to become rich over-night find easy ways and means to earn money even at the cost of the health of the public, therefore, no leniency in the sentence can be shown.

Dismissed.

October 14, 2010 (A.N.JINDAL)
`gian' JUDGE